



**WISCONSIN SUPREME COURT
THURSDAY, JANUARY 15, 2004
9:45 a.m.**

02-1166 Wis. Citizens Concerned for Cranes & Doves, et al v. DNR, et al

This is a review of a split decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed an order of the Dane County Circuit Court, Judge Daniel R. Moeser presiding.

In this case, the Wisconsin Supreme Court will decide whether the state Department of Natural Resources (DNR) may establish a dove-hunting season.

Here is the background: In 2001, the Wisconsin Natural Resources Board established an open season on mourning doves. A member of the pigeon family, doves currently are hunted in 38 states. A group of about 250 state residents formed an organization called Wisconsin Citizens Concerned for Cranes and Doves (WCCCD) and filed suit seeking to have the Natural Resources Board's action voided. The circuit court halted the dove-hunting season, but acknowledged that the law is ambiguous. "The statutes involved in this case," Judge Daniel Moeser wrote, "are as clear as mud."

The Court of Appeals reversed in a 2-1 decision. The majority held that the following Wisconsin law authorizes the DNR to establish a season on mourning doves:

Wisconsin Statutes § 29.014(1):

The [DNR] shall establish and maintain open and closed seasons for fish and game and any bag limits, size limits, rest days and conditions governing the taking of fish and game that will conserve the fish and game supply and ensure the citizens of this state continued opportunities for good fishing, hunting and trapping.

The dissent, on the other hand, concluded that the word "game" in the statute was not intended to encompass doves. Judge Charles P. Dykman wrote:

I am not as convinced as the majority that muskies and white-tailed deer are analogous [to doves]. While they are the state fish and state wildlife animal, they were not designated as Wisconsin's "fish of peace" and "deer of peace." And they have always been the object of anglers and hunters because of their culinary and trophy status. Doves have not achieved that status. I have yet to see a stuffed dove hanging on anyone's wall.

The question of whether doves qualify as "game" is central to this case. Two sections of the statutes are key. The first, 29.014 (1) permits the DNR to set hunting seasons for game, which is defined to include "all varieties of wild birds." The second, 29.001 (39), defines "game birds" by listing certain species – leaving out mourning doves. The statute indicates that any species not listed as a "game bird" is a "non-game species." So, the state laws seem to define mourning doves as both game and non-game.

The Supreme Court, which denied an application for a temporary injunction that would have halted the fall 2003 dove hunt while this case was pending (thus the hunt took place), will interpret these statutes and decide whether the DNR may establish a dove-hunting season in Wisconsin.